



**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006

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January 7, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
Room 200  
1919 M Street, NW  
Washington, D.C. 20554

Re: Petition of US WEST Communications for a Declaratory Ruling Regarding the Provision of National Directory Assistance, CC Docket No. 97-172; MCI/Telecom. Corp. v. Illinois Bell Telephone Co., et al., E-97-19; and MCI Telecom. Corp. v. US West Communications Corp., E-97-40

Dear Ms. Salas:

Enclosed is a copy of AT&T's December 17, 1997 *ex parte* filing submitted to be entered into the record in the above-captioned US West Petition for Declaratory Ruling. Pursuant to the Commission's request in its Public Notice (DA 97-1634), in which the Commission established that the declaratory ruling proceeding (CC Docket No. 97-172) and the above-captioned complaint cases by MCI against Ameritech and US West should be treated as "permit but disclose" proceedings, MCI submits the appended AT&T filing as supplemental information to establish a full and complete record in the formal complaint proceedings.

An original and seven copies of this letter and its corresponding attachment are being submitted for inclusion in the public records in each of the above-listed dockets (one copy in CC Docket No. 97-172 and three each in the formal complaint dockets).

Sincerely,

R. Dale Dixon, Jr.

cc: Ms. Michelle Carey  
Mr. John L. Traylor  
Ms. Deena M. Shetler  
Mr. Frank M. Panek  
Ms. Diane Griffin Harmon

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December 17, 1997

**Hand Delivered**

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 200  
Washington, D.C. 20554

Re: **CC Docket No. 97-172, U S West Petition For Declaratory Ruling  
Regarding The Provision Of National Directory Assistance**

Dear Ms. Roman Salas:

The purpose of this letter is to bring to the Commission's attention certain statements by U S West and BellSouth to the United States Court of Appeals for the D.C. Circuit that directly contradict arguments those BOCs made to the Commission in the above-captioned proceeding.

One of the central elements of U S West's defense of its National Directory Assistance ("National DA") offering is its assertion that Section 271's in-region interLATA prohibition is narrower than the interexchange restriction imposed by the Modification of Final Judgment ("MFJ").<sup>1</sup> BellSouth made the same argument in its comments on the U S West Petition, expressly endorsing U S West's reading of the 1996 Act.<sup>2</sup>

However, in their joint opening brief to the D.C. Circuit in BellSouth v. FCC, U S West and BellSouth state that "[T]he 'Special Provisions' of 47 U.S.C. §§ 271-273 and 275 ... essentially codify the decree's prohibition on BOC provision of long-distance

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<sup>1</sup> See, e.g., U S West, Petition for Declaratory Ruling Regarding The Provision Of National Directory Assistance, filed July 17, 1997, p. 7 ("The interLATA prohibition in the [1996] Act differs from the MFJ's.") ("U S West Petition").

<sup>2</sup> See, e.g., BellSouth Comments, p. 7 ("as U S West has shown, the [1996] Act's prohibition on 'interLATA services' is narrower than" the scope of the MFJ) (citing U S West Petition, pp. 7-9).



Ms. Magalie Roman Salas

December 17, 1997

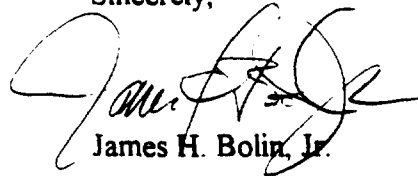
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services ...."<sup>3</sup> Their brief goes on to argue that "Congress simply ... cop[ied] the judicial decree and paste[d] it into the statute books ...."<sup>4</sup> The relevant pages of BellSouth's and U S West's brief in BellSouth v. FCC are attached to this letter. AT&T submits that U S West's and BellSouth's unequivocal statements to the D.C. Circuit must be deemed to be their revised view of the scope of Section 271.

As AT&T demonstrated in its comments and reply comments in the above-captioned proceeding, both U S West's and BellSouth's National DA offerings require those BOCs to engage in the transmission of calls across LATA boundaries in a manner that violates even their own implausible reading of Section 271. Now that U S West and BellSouth have conceded that the MFJ's interLATA prohibition and Section 271's in-region interLATA restrictions are coextensive, the illegality of their National DA services is even more apparent.

Two copies of this letter are being submitted, in accordance with Section 1.1206 of the Commission's Rules.

Sincerely,



James H. Bolin, Jr.

cc: A. Wright, Esq. (via hand delivery)

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<sup>3</sup> Joint Brief of Petitioner BellSouth Corporation and Intervenor U S West, Inc. at 29 (filed October 31, 1997), BellSouth v. FCC, No. 97-1113 (D.C. Circuit).

<sup>4</sup> Id., p. 30.

**ORAL ARGUMENT SCHEDULED FOR FEB. 20, 1998**

**INITIAL VERSION**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 97-1113**

**BELLSOUTH CORPORATION,  
Petitioner.**

**v.**

**FEDERAL COMMUNICATIONS COMMISSION and  
UNITED STATES OF AMERICA,  
Respondents.**

**U S WEST, INC., AT&T CORP., and MCI TELECOMMUNICATIONS CORP.,  
Intervenors.**

**On Petition for Review of an Order of  
the Federal Communications Commission**

**JOINT BRIEF OF PETITIONER BELLSOUTH CORPORATION  
AND INTERVENOR U S WEST, INC.**

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***Counsel for BellSouth Corporation and U S WEST, Inc.***

**October 31, 1997**

86 (1916) (Holmes, J.) (“[I]t is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.”).

2. The FCC also contends in its *Order* that, “in enacting the 1996 Act, Congress freed BOCs from the terms of an antitrust consent decree.” *Order* at ¶ 39 (J.A. \_\_\_\_). Accordingly, the FCC concludes, Section 274 could not qualify as “punitive.”

The Commission’s argument is incorrect on several levels.

First, regardless of the effects of other sections of the 1996 Act, *Section 274* certainly did not liberate the BOCs from any provision of the AT&T Consent Decree. In 1991, five years prior to the Telecommunications Act of 1996, the district court and this Court freed the BOCs to provide electronic publishing and other forms of information services, based on the overwhelming showing by DOJ and the FCC that the restriction was anticompetitive. *See* pp. 5-8, *supra*. *Section 274 re-imposed* a ban on electronic publishing that had been lifted five years previously.

Nor can any purported benefits bestowed by other provisions of the Telecommunications Act of 1996 justify the bill of attainder represented by *Section 274*. No court has ever held that impermissible legislative punishment can be overlooked because of a supposed provision of collateral benefits in some other part of a statute.

Moreover, the “Special Provisions” of 47 U.S.C. §§ 271-273 and 275 do not free the BOCs from the substantive requirements of the AT&T Consent Decree. Rather, the Special Provisions essentially codify the decree’s prohibition on BOC provision of long-distance

services and telecommunications equipment manufacturing — and add a five-year ban on alarm monitoring services, which the BOCs were free to provide prior to the 1996 Act. Congress also eliminated the possibility of entry through the modification and waiver process of the decree and substituted a stringent and onerous procedure of FCC approval that has stymied entry into long distance and manufacturing.

The relationship between the Special Provisions and the AT&T Consent Decree only highlights the constitutional impropriety of Congress's action. The government has described the Special Provisions as "revamp[ing] th[e] framework [of the decree] and mov[ing] it from the judicial and executive realm to the legislative realm."<sup>19</sup> But for Congress simply to copy a judicial decree and paste it into the statute books amounts precisely to "trial by legislature" — the very thing the Bill of Attainder Clause was meant to prohibit. *See Brown*, 381 U.S. at 442 ("The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply — trial by legislature."). In codifying the decree, Congress essentially adjudicated the liability issues that the decree expressly left unresolved, against companies that were not even defendants in the AT&T

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<sup>19</sup> Government's Memorandum in Support of its Cross-Motion for Summary Judgment *SBC Communications, Inc. v. FCC*, Civil No. 7-97-CV-163-X (N.D. Tex.), at 6 (filed Sept. 23, 1997).